

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Douglas McLaren

v.

Civil No. 09-cv-172-JD
Opinion No. 2010 DNH 100

Tracy Warren

O R D E R

Douglas McLaren, who is a prisoner proceeding pro se and in forma pauperis, filed a civil rights action, under 42 U.S.C. § 1983, against Tracy Warren, who is the warden of the Strafford County House of Corrections. Following preliminary review under 28 U.S.C. § 1915A(a) and Local Rule 4.3(d)(2), the magistrate judge issued a report and recommendation in which he concluded that McLaren's claims of denial of adequate medical care related to his spinal and skin conditions and denial of the right to petition the government based on a denial of his medical records should be served on Warren. The magistrate recommended that the remainder of McLaren's claims be dismissed, and the report and recommendation was approved.

Although McLaren was allowed to amend his complaint to add defendants, those defendants were not served and are not part of the case. The court has granted McLaren's requests for

extensions of time and to submit evidence to be held by the clerk of court.

Beginning in mid May, however, McLaren began to refuse to accept mail sent to him from the court. To date, he has refused to accept two copies of an order, mailed on May 12 and 13, that granted Warren's motion for an extension of time; a copy of an order mailed on May 12 that granted Warren's motion to preclude premature evidence and amendment of the complaint; and a copy of an order mailed on May 20 that denied McLaren's motion to dismiss. The refused mail has been returned to the court marked "Inmate Refused."

On May 18, 2010, Warren moved to compel responses to her interrogatories and requests for production of documents, which were propounded in February. Counsel for Warren has notified the court that McLaren refused to accept copies of the two motions, which were mailed to him on May 18 and returned to counsel marked "'Inmate Refused' 5/20/10." McLaren has not responded to Warren's filings or notified the court of a reason for his refusal to accept mail.

Because McLaren is proceeding pro se and is in prison, his refusal to accept mail sent by the court and by counsel for Warren prevents communication with him about the case. In the absence of an explanation, McLaren's behavior demonstrates that

he is not complying with the Federal Rules of Civil Procedure and that he is no longer interested in prosecuting the case. Cf. Johnson v. DeRose, 2010 WL 817398, at *6 (M.D. Penn. March 9, 2010) (declining to dismiss for lack of prosecution, based on refusal of mail, where plaintiff explained that he did not receive the court's order). Therefore, McLaren's claims are dismissed without prejudice. Fed. R. Civ. P. 41(b); see also Odom v. Dunlap, 2006 WL 2345926, at *2 (D.S.C. Aug. 10, 2006); Boone v. Lehman, 1996 WL 4085, at *1-*2 (Jan. 3, 1996).

Conclusion

For the foregoing reasons, the case is dismissed without prejudice. The defendant's motions to compel (documents no. 60 and 61) are terminated as moot.

The clerk of court shall enter judgment accordingly and close the case.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

June 9, 2010

cc: Corey M. Belobrow, Esquire
Douglas W. McLaren #33411, pro se